

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:

JOSEPH WILLIAM DIEHL

CHARLOTTE ANN SHOWALTER-DIEHL

Debtors

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CASE NO. 04-15011

DECISION AND ORDER

At Fort Wayne, Indiana, on June 22, 2006

The trustee in this Chapter 7 case has objected to a claim filed on behalf of the Indiana Department of Revenue which has been designated by clerk as claim no. 7. There has been no response to this objection within the time required by the local rules of this court, N.D. Ind. L.B.R. B-3007-1(b) and the matter is before the court for a decision.

The trustee asks that the claim be denied because it duplicates claim number 9 which is being allowed. Admittedly the creditor is entitled to only one claim against the estate, but claim 9 is not a duplicate claim – the same claim filed twice. Instead, it amends and replaces a claim filed on February 17, 2005. As a result, original claim filed by the Indiana Department of Revenue – claim no.7 – has been superceded by claim 9. It is no longer pending before the court and of no further force or effect. See Cf., 188 LLC v. Trinity Industries, Inc., 300 F.3d 730, 736 (7th Cir. 2002)(“An amended pleading ordinarily supercedes the prior pleading. The prior pleading is in effect withdrawn. . .and becomes functus officio.”); Kelley v. Crosfield Catalysts, 135 F.3d 1202,1204-05 (7th Cir. 1998)(same). Thus, the Indiana Department of Revenue is asserting only one claim against the estate, not two, and the fundamental premise of the trustee’s objection is incorrect.

IT IS THEREFORE ORDERED that the trustee’s objection to claim no. 7 filed by the

Indiana Department of Revenue is overruled.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court